grandchildren named were in being, and a conveyance properly joined in by them would release and extinguish the power-in-trust. All mankind uniting could convey a fee. See *Garver* v. *McDevitt* (1878) 72 N. Y. 556. A later case, however, has created some doubt as to this result, where a power-in-trust expressly not to be exercised for a period, longer than permitted, was held invalid. *Matter of Will of Butterfield* (1892) 133 N. Y. 473, 31 N. E. 515. This is clearly inconsistent with *Hetzel* v. *Barber, supra.* The statutory rule against perpetuities in New York has recently been interpreted to include also a prohibition against remote vesting beyond the period of two lives in being. *Matter of Wilcox, supra* at p. 298. The bequest to the children when they attain twenty-one is contingent and not vested. *Dickerson* v. *Sheehy* (1913) 156 App. Div. 101, 141 N. Y. Supp. 1116, aff'd 209 N. Y. 592, 103 N. E. 717. Where the words of gift are in the direction of paying and dividing, futurity is annexed to the substance of the gift; both the time of vesting and actual enjoyment are postponed, and in the instant case vesting might be deferred for five lives in being. But this would only affect the interests of the children. See Gray, *op. cit.* §§ 247-250; Tiffany, Real Property § 157. Consequently, neither under the rule against suspension of alienation nor under the rule of remote vesting, would the estates of B or C be affected if *Hetzel* v. *Barber* is to be followed, unless the court should consider it would more nearly effectuate the testatrix's expressed intention, to declare an intestacy of the whole provision. *Cf. Savage* v. *Burnham* (1858) 17 N. Y. 561.

SALES—EFFECT OF CUSTOM ON MODE OF TENDER OF PRICE.—Pursuant to a contract for the sale of hides, the plaintiff tendered a draft, which the defendant refused to accept, demanding cash. The contract did not expressly state the method of payment, but there was a custom in the trade that payments were made by draft. In an action for failure to deliver the hides, the plaintiff received a verdict. On appeal, *held,* new trial ordered. *Stein* v. *Shapiro* (Minn. 1920) 176 N. W. 54.

Where the contract is silent as to the method of payment, tender in cash is presumed. Mechem, Sales § 1421. By express agreement of the parties, the price may be payable in any form of personalty. Uniform Sales Act, § 9(2). This is true of a draft. *Patterson* v. *Stettanet* (N. Y. 1875) 8 Jones & S. 54. Such an agreement may be implied from the extrinsic circumstances; and custom or usage in the trade ought to be relevant to explain the true bargain expressed in the contract. Uniform Sales Act, § 71; Elliott, Contracts, c. 38, §§ 1710, 1705, 1706. While it is true that certain rules of law, like the requirement of consideration in simple contracts, cannot be changed by express or implied agreements between the parties, others, rather rules of construction, can be so changed, for instance, the rule that where there is a contract to sell specific goods, "property" passes at the time of the contract. In the last analysis, however, such rules are really not changed by private agreement; as properly phrased, they are usually prefixed with the proviso, "in the absence of any agreement to the contrary". Uniform Sales Act, § 19. In the instant case, the court implied that the usage in question could not subvert the "well-settled" rule that payment must be in cash. *Cf. Hart* v. *Cort* (1914) 165 App. Div. 583, 151 N. Y. Supp. 4. The decision, however, really turns upon the interpretation of the custom, which seems to amount to hardly more than that the acceptance of drafts by the seller was for purposes of convenience rather than from an obligation of contract.

But if, in fact, the custom were that drafts were equivalent to cash as a means of payment, it would seem that the buyer should be able to put the seller in default by such a tender.

TAXATION—TRANSFER AND INHERITANCE TAX—ADDITIONAL TAX IN CASE OF NON-PAYMENT OF PERSONAL PROPERTY TAX.—Decedent acquired taxable bonds after date when assessment roll was filed and died two days before the assessment of the following year, never having paid either local or state taxes on the bonds. The State Comptroller appeals from an order of the Surrogate striking from the transfer tax the additional tax of five per cent provided by section 221b of the New York Tax Law. Consol. Laws c. 62 (Laws of 1917 c. 700). This section imposes the additional tax on investments, unless the decedent has paid personal property taxes on them, or unless immunity therefrom has been secured by voluntary payment of the State Investment Tax provided by section 331 of the same chapter. *Held,* order of Surrogate affirmed. *In re Otis' Estate* (1920) 180 N. Y. Supp. 313.

It would appear that this decision necessarily follows from the reasoning in *Matter of Watson* (1919) 226 N. Y. 384, 123 N. E. 758, in which it was held that the five per cent tax was constitutional. In that case the intervenors contended that section 221b resulted in making the Investment Tax compulsory, notwithstanding its clear language, and if compulsory it would be unconstitutional as imposing a tax on face value and not on actual value of the securities. In answer, the court pointed out on p. 405 that the taxpayer always had the alternative of paying his rightful local taxes. Hence, to preserve this latter premise intact it seems necessary to hold, as in the principal case, that section 221b does not apply in the absence of such opportunity to pay local taxes. On principle also, the decision in the instant case seems to be sound. As special taxation, these provisions are always construed strictly against the state and in favor of the taxpayer. See *Matter of Vassar* (1891) 127 N. Y. 1, 128, 27 N. E. 394. The clear intention of the statute is to discourage evasion of the personal property tax, and it was not intended to apply where no duty arises to list or pay such a tax within the period during which the investments are held. Clearly the decedent was under no duty here. The State Tax is optional on the authority of *Matter of Watson, supra,* and it is settled that there is never any liability to pay taxes on personalty acquired after the assessment day for the period ensuing. *Clark* v. *Norton* (1872) 49 N. Y. 243. Personal property taxes do not attach to the property taxed, but are a liability of the person holding title on the day of the assessment. *State* v. *Jersey City* (1882) 44 N. J. L. 156.

TRUSTS—APPORTIONMENT—SALE OF DISSENTING STOCK UNDER REORGANIZATION.—T, trustee of 2,100 shares in the L Co., refused to accept 10,500 shares of the C Co. in their place, under a consolidation plan. The R Co., a subsidiary of the C Co., took over the L Co.'s purchase contracts with the non-assenting shareholders, and bought T's stock at $500 a share. This the R Co. exchanged for stock of the C Co., which was sold to the public. There was no formal distribution of assets by the L Co. to its stockholders in any way. *Held,* reversing the Surrogate's decree (1919) 106 Misc. 375, 174 N. Y. Supp. 880, the proceeds of the sale above the value of the stock at the time of the creation of the trust should be apportioned between the remainderman and life-